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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,408	08/30/2001	Akito Kohno	393032027800	3181
25224	7590	08/21/2007	EXAMINER	
MORRISON & FOERSTER, LLP 555 WEST FIFTH STREET SUITE 3500 LOS ANGELES, CA 90013-1024				FAULK, DEVONA E
ART UNIT		PAPER NUMBER		
2615				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/945,408	KOHNO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Devona E. Faulk	2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 06 October 2006.
- 2a) This action is **FINAL**.                                   2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 3-5, 7, 8, 10, 11 and 16 is/are allowed.
- 6) Claim(s) 1, 2, 6, 9 and 12-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 30 August 2001 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## DETAILED ACTION

1. The applicant filed an amendment after final on 10/6/2006. The applicant amended claims to overcome 112 rejections set forth in the final rejection.
2. The indicated allowability of claims 1,3,9,12 is withdrawn in view of the newly discovered reference(s) to Tanji, Kobayashi. Rejections based on the newly cited reference(s) follow.
3. The finality of the last office action is withdrawn.

### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 12 –14 recite “..a program, embodied on a computer readable medium....”. A program is non-statutory subject matter.

Examples of acceptable language in computer-processing related claims :

1. “computer readable medium” encoded with \_\_\_\_\_
  - [a] “a computer program”
  - [b] “software”
  - [c] “computer executable instructions”
  - [d] “instructions capable of being executed by a computer”
2. “a computer readable medium” \_\_\_\_\_ “computer program”
  - [a] storing a
  - [b] embodied with a
  - [c] encoded with a
  - [d] having a stored
  - [e] having an encoded

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,6,9 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Tanji (JP 10-320194).

Regarding claim 1,9, Tanji discloses a mixing apparatus (Figure 1) comprising:

an input device having a plurality of input channels (switch panel 2, Figure 1);

a first assigning device that assigns a respective one of a supplied plurality of first audio data to each one of said plurality of input channels (switch 23; paragraphs 0019-0020,0032);

a bus device that mixes the plurality of first audio data assigned to the respective ones of said plurality of input channels (mixer 15, Figure 1; the mixer reads on bus device because it is a device connected to the bus);

an output device that outputs the audio data mixed by said bus device (sound system, 18, Figure 1);

a storage device that stores a plurality of second audio data (waveform memory 5, Figure 1);

a plurality of operating members each being disposed to be depressed and having a sensor for detecting the depression (pads 21a-21j and indicator 3, Figure 1; paragraphs 0012-00);

a second assigning device that assigns at least one of the plurality of second audio data stored in said storage device to at least one of said plurality of operating members (paragraph 0035); and

a reproducing device for reproducing second audio data when the at least one of said plurality of operating members to which the one of the plurality of second audio data is assigned is detected by the sensor as being depressed (RAM 8);

wherein the second audio data reproduced by said reproducing device is supplied to said first assigning device and assigned to one of said plurality of input channels by said first assigning device, and said bus device mixes the second audio and the first audio data, and said output device outputs the mixed audio data (paragraphs 0019-0023; 0032-0035).

All elements of claim 6 are comprehended by the rejection of claim 1.

All elements of claims 9 and 15 are comprehended by Tanji as applied to claim 1.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tanji (JP 10-320194).

9. Regarding claim 2, Tanji discloses operating members used to assigned audio data. Tanji fails to explicitly discloses assigning stereo audio data to the two adjacent operating members. The user determines what is assigned to a particular operating member. Therefore, it would have a matter of design choice as to what signal is assigned to an operating member. It would be obvious to assign stereo audio data to two adjacent operating members if that is what the design of the system required.

Regarding claim 12, Tanji as applied above to claim 1 reads on the claim language, with the exception of a program embodied on a computer. The examiner takes official notice that a program, embodied on computer readable medium, can cause a computer to execute a method or application is known in the art. It would have been obvious to modify Tanji by embodying the program on a computer readable medium that would cause a computer to execute the method so that a computer can perform specific tasks as opposed to relying on physical components to do the tasks, thus providing for faster and more efficient processing.

***Allowable Subject Matter***

10. Claims 3-5,7,8,10,11,16 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claims 3,5,11 prior art Powers, US 6, 839,441, discloses a sound mixing console with master control section including an input device that inputs a plurality of first audio data, an assigning device, a storage device. Prior art Tanji (JP 10-320-194) discloses an effect giving device and recording medium. Prior art Yamamoto, US 5,942,708, discloses a tone generator with diversification of waveform using variable addressing including an input device, a hard disk drive, a plurality of operating members an assigning device, a memory, a control device. Prior art Saito,US 6,198,035, discloses a musical sound signal generation apparatus. Prior art East, US 6,061,458, discloses an audio mixing console. Prior art Ito, US 5,300,723, discloses an electronic music device including a switch panel and a switch detection circuit. Prior art Suzuki et al., US 5,831,193, discloses a method and device for forming a tone waveform by combined use of different waveform sample forming resolutions including a hard disk drive, a RAM having a working memory. Prior art Haruyama, US 5,902,948, discloses a performance-instructing device including a RAM memory that temporarily stores automatic performance data, and a switch panel and a switch-detecting panel. Prior art Kondo et al., US 5,668,337 discloses an automatic performance device including a display including a channel change table used to assign data to certain channel, a switch operation detection circuit. Prior art Yamamoto et al, US 6,573,444, discloses a music data compression apparatus and method including a hard disk drive having a primary memory that temporarily stores musical pieces recorded on a music CD and

when a user presses a digital dubbing key the data stored in the primary memory, compressed and the compressed data is stored in a secondary memory.

Regarding claims 3 and 10, the prior art or combination thereof fails to disclose or make obvious; “a second control device that causes said second storage device to store information indicating timing of depressing the at least one of said plurality of operating member”.

Regarding claims 5 and “an assigning device that assigns at least one of the plurality of second audio data stored in said built-in hard disk device and at least one of the plurality of third audio data stored in said external storage device respectively to at least one of said plurality of operating members” and “said control device that is responsive to said assigning device assigning the third audio data, respectively, to the at least one of said plurality of operating members, for causing said built-in hard disk device to temporarily store the assigned second audio data and causing said memory to store the assigned third audio data, said control device being further responsive to said assigning devices assigning the second audio data, respectively, to the at least one of said plurality of operating members, for reading out the assigned second audio data from said built-in hard disk device and causing said memory to temporarily store the assigned second audio data without double storing the assigned second audio data in said built-in hard disk”. Therefore the prior art or combination thereof fails to disclose or make obvious a mixing device and method as claimed.

**Claims 4,7,8,10 and 16** are allowed due to dependency on claim 5.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 571-272-7515. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DEF

  
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